

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

IN RE:

TRUSTEES OF THE RHODE ISLAND :
LABORERS' HEALTH AND WELFARE :
FUND, TRUSTEES OF THE RHODE ISLAND :
LABORERS' PENSION FUND, TRUSTEES :
OF THE RHODE ISLAND LABORERS' :
TRAINING TRUST FUND, TRUSTEES OF :
THE RHODE ISLAND LABORERS' LEGAL :
SERVICES FUND, AND TRUSTEES OF THE :
RHODE ISLAND CONSTRUCTION INDUSTRY :
ADVANCEMENT FUND :

v. :

C.A. No. 05-024S

SOUTH SHORE UTILITY :

REPORT AND RECOMMENDATION


Before this Court is Plaintiffs' Application for Entry of Default Judgment pursuant to Fed. R. Civ. P. 55(b). This matter has been referred to me for findings and recommendation. 28 U.S.C. § 636(b)(1)(B); Local R. 32(a). A hearing was held on June 28, 2005. For the reasons discussed below, this Court recommends that the District Court GRANT Plaintiff's Application for Entry of Default Judgment and enter Default Judgment in this matter in favor of Plaintiffs and against Defendant in the form attached hereto.

This is an ERISA action brought by various Union Trust Funds to recover unpaid benefit fund contributions related to work performed by members of the Rhode Island Laborers' Union for Defendant pursuant to a collective bargaining agreement. Plaintiffs also seek the return of union dues deducted from the employees' wages but not paid to the Union.

Plaintiffs' Complaint was filed on January 21, 2005. On February 7, 2005, Plaintiffs filed a Return of Service certifying personal service on Defendant at its Providence location. Defendant did not respond to Plaintiffs' Complaint in a timely fashion and has otherwise failed to appear in or defend this action. On May 27, 2005, default was entered by the Clerk against Defendant. Defendant now moves for the Entry of Default Judgment in the total amount of \$181,390.40 plus pre-judgment interest from March 20, 2005 and costs in the amount of \$195.00. In support of its Application, Plaintiffs have presented the Affidavit of a Rhode Island Laborers' Union Official, Ronald M. Coia, who has certified under penalty of perjury that Defendant is delinquent as to Trust Fund contributions in the amount of \$172,447.20 and delinquent as to withheld union dues in the amount of \$8,943.20 which totals the amount of \$181,390.40 requested as Default Judgment. In support of its calculation, Plaintiffs provide copies of Employer's Remittance Reports for the months in question which include the employee's name, Laborers' local union number, hours paid for the month and a total calculation of fund contribution and dues payable for the month. These reports are attached to Mr. Coia's Affidavit, and he certifies that these reports are true copies of the originals filed by Defendant with the Funds.

Based on the foregoing, this Court concludes that Plaintiffs are entitled to Default Judgment against Defendant pursuant to Fed. R. Civ. P. 55(b) in the form attached hereto. Thus, this Court recommends that the District Court GRANT Plaintiffs' Application for Default Judgment and ENTER Default Judgment against Defendant in the form attached hereto. Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of the Court within ten (10) days of its receipt. See Fed. R. Civ. P. 72(b); D.R.I. Local R. 32. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the District Court and the

right to appeal the District Court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).



LINCOLN D. ALMOND
United States Magistrate Judge
June 28, 2005

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THE RHODE ISLAND LABORERS' LEGAL	:	
SERVICES FUND, AND TRUSTEES OF THE	:	
RHODE ISLAND CONSTRUCTION INDUSTRY	:	
ADVANCEMENT FUND	:	
	:	
	:	
v.	:	C.A. No. 05-024S
	:	
	:	
SOUTH SHORE UTILITY	:	

DEFAULT JUDGMENT

Judgment is hereby entered in favor of Plaintiffs against Defendant in the amount of One Hundred Eighty-one Thousand, Three Hundred Ninety Dollars and Forty Cents (\$181,390.40), plus interest from March 20, 2005 and costs in the amount of One Hundred Ninety-five Dollars (\$195.00).

PER ORDER

ENTER

William E. Smith
United States District Judge
July _____, 2005